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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2249/2013*, **

Communication submitted by:	R.E. (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	20 December 2011 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 11 June 2013 (not issued in document form)
Date of adoption of decision:	19 July 2018
Subject matters:	Torture; forced confession; effective remedy
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Torture; forced confession; effective remedy
Articles of the Covenant:	2 (3), 7 and 14 (3) (g)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is R.E., a national of the Russian Federation born on 25 June 1978. He claims that the State party has violated his rights under articles 2 (3), 7 and 14 (3) (g) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

The facts as submitted by the author

2. On 3 May 2007, the author was interrogated at 3 p.m. at home about the death of his mother, who had died earlier that day by falling down a flight of stairs at their house. He provided written testimony that it was an accident and that she had tripped and fallen down the stairs. At 10 p.m. on the same day, he was taken to the police station, where he was beaten for one hour by a police officer whose surname was Voronin. He was then interrogated by an investigator whose surname was Listarov, for 25 minutes, from 11.20 p.m. to 11.45 p.m. At the end of the interrogation, the author confessed to being drunk and pushing his mother from the top of the stairs, then hitting and kicking her while she was on

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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the floor.[1] He claims that the second interrogation was in violation of the law which prohibits night-time interrogations.[2] Also, the lawyer who was appointed to him did not provide him with quality legal assistance, because he failed to protect his rights when he was unlawfully interrogated at night-time, and later defrauded him of 20,000 roubles[3] and failed to file a cassation appeal on his behalf.[4] On 30 August 2007, the author was found guilty by Sosnovskiy District Court of premeditated infliction of grave bodily harm which caused the death of his mother, and was sentenced to 10 years in prison. On 19 October 2007, his sentence was reduced to 9 years and 10 months by Nizhegorodskiy Regional Court on cassation appeal. On 7 July 2008, the Supreme Court of the Russian Federation denied the author's appeal for a supervisory review.

The complaint

3.1 The author claims that the failure to provide an effective remedy in response to his complaints amounts to violation of his rights under article 2 (3) of the Covenant.

3.2 The author also claims that the beatings by the police on the day of his arrest amount to violation of article 7 of the Covenant.

3.3 The author further claims a violation of article 14 (3) (g) of the Covenant, due to the forced confession extracted from him by the police.

State party's observations on admissibility

4. In a note verbale dated 2 October 2013, the State party noted that during the pretrial investigation the author had fully confessed to having committed the crime and had not submitted any complaints regarding unlawful actions by the police. The State party also noted that, on 25 December 2009, Pavlovskiy City Court had refused to initiate a criminal case against the author's lawyer, and the author had not appealed against that decision. The lawyer was hired by the author on a contractual basis.[5] On 31 March 2011, the author submitted an appeal for a supervisory review of his verdict to the Sosnovskiy district prosecutor's office. In his appeal, he claimed that after his arrest on 3 May 2007 he had been beaten by police officers of Sosnovskiy district. The prosecutor's office decided that there were no grounds for a supervisory review, however the author did not appeal against that decision. The State party claimed that since the author had not exhausted all available domestic remedies, his communication should be deemed inadmissible.

State party's observations on the merits

5.1 In a note verbale dated 29 January 2014, the State party noted that on 30 August 2007 Sosnovskiy District Court had sentenced the author to 10 years in prison for premeditated infliction of grave bodily harm causing the death of his mother. On 19 October 2007, after hearing his cassation appeal, Nizhegorodskiy Regional Court reduced the author's sentence to 9 years and 10 months on the grounds that his confession should have served as a mitigating circumstance. On 10 November 2011, Krasnobakovskiy District Court further reduced the sentence to 9 years and 8 months of prison to bring it into compliance with the new Criminal Code. The author's guilt was proved by his own testimony during the pretrial investigation, according to which he pushed his mother from behind, which made her fall down the staircase, then hit her in the face with the palm of his hand, then hit her head against the corner of a door. It was also proved by the testimony of his father, who saw the author grabbing his mother by her hair and kicking her; by the testimony of a witness named Starova, who saw blood on the author's hands when he came

[1] Case documents show that the author was questioned in the presence of his lawyer.

[2] Article 164 of the Criminal Procedure Code allows for interrogations only between 6 a.m. and 10 p.m. Interrogations after 10 p.m. are allowed only in circumstances where the interrogation cannot be postponed.

[3] The author claims that the lawyer asked for Rub. 20,000 ($700 at that time) for his services, part of which was supposed to go to an unnamed person who would ensure that the author received the lightest possible sentence.

[4] Case documents show that the cassation appeal was submitted by the author himself.

[5] Case documents show that the lawyer was appointed by the investigator.

to her house after his mother had died; by the results of the autopsy, which excluded the possibility of the victim receiving all of her injuries just by falling down the stairs from an upright position; and by other evidence in the case.

5.2 The State party also noted that the author's lawyer had been appointed by the case investigator in accordance with article 41 of the Criminal Procedure Code and had acted in the interests of the author. Neither at his trial nor at his cassation appeal did the author indicate that any unlawful methods of investigation had been used against him. On 10 April 2012, the author submitted a complaint of unlawful arrest and coerced confession, which resulted in an inquiry in accordance with articles 144–145 of the Criminal Procedure Code[6] by the Pavlovskiy interdistrict office of the Investigative Committee and in the subsequent refusal to open a criminal case on 9 May 2012 due to an absence of corpus delicti. The refusal was upheld on appeal by Sosnovskiy District Court on 26 June 2012 and by Nizhegorodskiy Regional Court on 28 September 2012.

5.3 The State party noted that the author had been questioned as a suspect on 3 May 2007 between 11.20 p.m. and 11.45 p.m. and that the circumstances did not allow for the questioning to be postponed. He was questioned immediately after his detention and in the presence of a lawyer who had been assigned to him. The detention and interrogation records on the author show that he did not make any statements about unlawful methods of influence having been used on him. On 4 May 2007, Sosnovskiy District Court arrested him, and detained him for the duration of the pretrial investigation, and that decision was not appealed against by the author. The Pavlovskiy interdistrict office of the Investigative Committee on several occasions refused the author's complaints in which the author requested that a criminal investigation be initiated into the actions of his lawyer, with the last such refusal dated 4 December 2013. The refusal was later annulled by the head of the Pavlovskiy interdistrict office of the Investigative Committee and the complaint was returned for an additional inquiry. In case the author is not satisfied with the results of the additional inquiry, he will have the right to appeal against the decision in accordance with the procedure established under chapter 16 of the Criminal Procedure Code. Therefore, the author's claims of violation of his rights have not been found to be substantiated.

Author's comments on the State party's observations

6.1 In a letter dated 1 April 2014, the author commented on the observations of the State party. He claimed that the violence that had been used against him by the police to extract his confession amounted to a violation of article 7 of the Covenant. The author noted that his first complaint about his lawyer's failure to provide him with quality legal assistance had been to the prosecutor's office of Sosnovskiy district, on 14 December 2009. The district prosecutor's office had transferred his complaint to the Investigative Committee, and on 25 December 2009 the Pavlovksiy interdistrict office of the Investigative Committee had rendered a decision to refuse a criminal investigation into the author's claims. On 17 November 2010, the head of the Pavlovskiy interdistrict office of the Investigative Committee had annulled the refusal to initiate a criminal investigation and sent the case back for an additional inquiry. During the inquiry, both the author's lawyer and the investigator in his case refused to testify,[7] and on 29 November 2010 the same investigator from the Pavlovksiy interdistrict office of the Investigative Committee rendered a new refusal to open a criminal investigation. That refusal was again annulled by the head of the interdistrict office on 3 December 2010, however the additional inquiry ended in another

[6] It is stated in article 144 of the Criminal Procedure Code that an inquirer, an investigator and a public prosecutor shall be obliged to accept and to examine a communication about any committed or prepared crime and, within the scope of the competence established by the present Code, to take the decision on it within a term of not more than three days from the day on which the said communication was received. When examining a report on a crime, the inquirer, the investigator and the public prosecutor shall be entitled to demand to carry out documentary and audit inspections and to invite specialists to participate in them.

[7] Case documents show that the lawyer refused to give testimony with regard to the nature of his legal defence work, and that the investigator refused to provide any testimony citing article 51 of the Constitution (no one shall be obliged to give testimony against themselves, a close relative, etc.).

refusal, on 13 December 2010. The assistant district prosecutor upheld the refusal to open a criminal investigation, on 7 March 2012.

6.2 On 21 July 2013, the author submitted another complaint about his unlawful arrest, the beatings by the police and the actions of his lawyer, to the head of the Investigative Committee of the Russian Federation. His complaint was transferred to the district prosecutor's office, which on 4 September 2013 refused to initiate a criminal investigation into the author's claims due to an absence of corpus delicti. That refusal was annulled and the complaint was sent for an additional inquiry, which on 4 December 2013 resulted again in a refusal to initiate a criminal investigation. On 6 February 2014, the district prosecutor again annulled the refusal, on the grounds that the author had not been informed about the results of the additional inquiry.

6.3 With regard to the State party's observations on admissibility, the author rejected the State party's claim that he did not submit any complaints during his trial. He noted that during his trial he orally submitted several complaints to the court,[8] but could not do so in writing because his lawyer had prevented him from receiving a pen and paper while he was in detention, so he could not submit any written complaints.

6.4 The author also rejected the State party's claim that he did not appeal against the 25 December 2009 refusal to initiate a criminal investigation. He noted that this refusal was rendered not by Pavlovskiy City Court, but rather by the Pavlovskiy interdistrict office of the Investigative Committee, and that it was annulled on 17 November 2010 as a result of his appeal. The author also rejected the State party's claim that he had hired his lawyer. He noted that his lawyer had been assigned to him by the court.[9] The author noted that on 12 August 2013 he submitted a complaint to the head of the Investigative Committee of the Russian Federation against unlawful actions of the police, however the State party on several occasions refused to open a criminal investigation into his complaints. Therefore, the author claimed to have exhausted all effective domestic remedies.

6.5 With regard to the State party's observations on the merits of the case, the author reiterated that in his initial testimony he told the police that his mother fell due to an accident, however he was later forced by the police to change his testimony and confess to having pushed and beaten his mother. He noted that since he had already been interrogated by the police at 3 p.m. on 3 May 2007, there were no circumstances that meant that his second interrogation, at 11.20 p.m. on the same day, could not have been postponed, thus any testimony given after 10.00 p.m. should have been ruled inadmissible by the court. He also noted that the court did not correctly evaluate all available evidence, as there were contradictions between the witness testimonies and the medical evidence.

State party's additional observations on the merits

7. In a note verbale dated 2 October 2014, the State party noted that the Pavlovskiy interdistrict office of the Investigative Committee had conducted several inquiries into the author's allegations about unlawful actions by his lawyer, all of which had resulted in refusals to open a criminal investigation into the matter, with the last such refusal being made on 3 July 2014 and upheld by the Office of the General Prosecutor of the Russian Federation. Also, on 22 April 2013, Sosnovskiy District Court denied the author's lawsuit against his lawyer, for moral damages due to inadequate legal assistance. On 22 July 2014, Nizhegorodskiy Regional Court denied the author's appeal and upheld the decision of the district court.

Author's additional observations on the merits

8. In a letter dated 20 October 2014, the author reiterated the unlawfulness of his interrogation after 10 p.m. and the inadmissibility of his confession. He claimed that his appeal to the General Prosecutor of the Russian Federation for a supervisory review of his sentence was unlawfully reviewed on 4 September 2014 by the head of the cassation and supervisory review department at the Office of the General Prosecutor, whereas it had been

[8] The author does not provide details of his complaints.

[9] Case documents show that the lawyer was assigned to the author by the investigator.

addressed to the General Prosecutor personally. He also claimed that neither the trial court nor the cassation court knew that he had been unlawfully interrogated and detained on the night of his mother's death, and that this should be viewed as a new circumstance in the case and serve as grounds for a new trial. The author submitted that on 26 May 2014, Sosnovskiy District Court had denied his complaint against the Pavlovskiy interdistrict office of the Investigative Committee for failure to investigate his claims against his former lawyer. He noted that the court had reviewed his complaint in his absence, although he had specifically motioned the court to provide for his presence during the hearing.

State party's further observations on the merits

9.1 In a note verbale dated 7 April 2015, the State party noted that a review of the arguments made by the author in his defence during the trial had shown that he had not made any statements regarding his treatment while in detention or regarding violation of his right to defence. His line of defence was that he did not cause the injuries that led to the death of his mother. When reaching the verdict, the court took into consideration, inter alia, his confession made during the pretrial investigation. In his cassation appeal filed on 5 September 2007, the author asked the court to find the confession he had given during the pretrial investigation inadmissible as he had been in a state of shock from what had happened and had been under the influence of alcohol. He did not provide any other grounds for inadmissibility of his confession.

9.2 Starting from 2008, the author submitted several appeals for a supervisory review. On 27 June 2008 he submitted his first appeal, in which he claimed that his confession had been coerced by the police. On 7 July 2008, that appeal was denied by the Supreme Court of the Russian Federation. On 1 August 2011, he submitted another appeal, in which he added that his lawyer had not provided him with quality legal assistance. That appeal was denied by Nizhegorodskiy Regional Court on 31 August 2011. On 20 December 2011, the author submitted another appeal containing allegations of police coercion. On 17 January 2012, that appeal was denied by the Chairperson of Nizhegorodskiy Regional Court.

9.3 The State party noted that the author's allegations of failure by his lawyer to provide quality legal assistance had also been subject to several inquiries by investigative bodies. On 29 November 2010, the Pavlovskiy interdistrict office of the Investigative Committee refused to initiate a criminal investigation into the author's complaint against his lawyer due to a lack of corpus delicti. That refusal was annulled on 25 October 2013 by the Sosnovskiy district prosecutor's office. An additional inquiry into the complaint resulted again in a refusal to initiate a criminal investigation, on 4 December 2013. The last such refusal was issued by the investigative bodies on 3 July 2014. The State party noted that all inquiries had been examined by the Office of the General Prosecutor of the Russian Federation, with the author notified about this on 3 September 2014.

9.4 The State party noted that national courts had twice reviewed the author's complaints under article 125 of the Criminal Procedure Code[10] about unlawful actions by his lawyer, by the deputy district prosecutor and by the investigator from the Pavlovskiy interdistrict office of the Investigative Committee, on 27 April 2011 and 26 September 2014. Both complaints had been denied.

9.5 On 22 April 2014, the author's lawsuit against his former lawyer for moral damages was denied by Sosnovskiy District Court. That decision was upheld by Nizhegorodskiy Regional Court on 22 July 2014.

9.6 The State party submitted that, on the basis of the above-mentioned court reviews and inquiries, it deemed the author's allegations of mistreatment while in detention and of violation of his right to quality legal assistance to be unsubstantiated.

[10] According to article 125, decisions of the inquirer, the investigator and the public prosecutor to refuse to institute a criminal case or to terminate a criminal case, as well as other decisions and actions or omissions, which may infringe the constitutional rights and freedoms of the participants in criminal court proceedings or may interfere with citizens' access to the administration of justice, may be appealed against to the district court at the place at which the preliminary investigation was conducted.

Author's further observations on the merits

10. In letters dated 17 November 2014, 2 February 2015 and 28 July 2015, the author reiterated his previous claims of ill-treatment by the police, and of coerced confession.

Issues and proceedings before the Committee

Consideration of admissibility

11.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

11.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that a similar complaint submitted by the author was declared inadmissible by the European Court of Human Rights on 23 February 2011 (application No. 36562/10), since it had been submitted after the expiry of a six-month period from the date on which the final decision was taken by the national authorities. However, article 5 (2) (a) does not preclude the Committee from examining the present communication, as the issue is no longer being examined by the European Court of Human Rights.

11.3 The Committee notes the State party's argument that the author has not exhausted domestic remedies, as he failed to appeal against the 25 December 2009 decision of Pavlovskiy City Court regarding the unlawful actions of his lawyer, and against the decision by the Sosnovskiy district prosecutor's office to deny his appeal for a supervisory review of his sentence. The Committee also notes the author's claim that the decision of 25 December 2009 was annulled on 17 November 2010 as a result of his appeal. With regard to the author's appeal for a supervisory review, the Committee notes that the author submitted at least four appeals for a supervisory review of his sentence between 2008 and 2013, including to the Supreme Court of the Russian Federation. The Committee also recalls its jurisprudence that a request for supervisory review to the chairperson of a court, directed against court decisions that have entered into force and depend on the discretionary power of a judge, constitutes an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.[11] In such circumstances, the Committee considers that, in the present case, it is not precluded, for the purposes of admissibility, by article 5 (2) (b), from examining the communication.

11.4 The Committee notes the author's claim that the State party violated article 2 (3) of the Covenant due to the failure to provide him with an effective remedy in response to his complaints. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 of the Covenant lay down general obligations for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[12] The Committee thus considers that the author's claims under article 2 of the Covenant are inadmissible under article 3 of the Optional Protocol.

11.5 The Committee notes the author's claim, under articles 7 and 14 (3) (g) of the Covenant, that he was subjected to beatings by the police after his detention on 3 May 2007 and was forced to confess to a crime that he had not committed. The Committee observes that there are no reports of injuries to the author that would be indicative of beatings or of other forms of ill-treatment or torture, and neither do the documents before the Committee show that the author made any claims about any ill-treatment to his own lawyer, or to the courts during his trial or his cassation appeal. The Committee also observes that in his cassation appeal, the author again confessed to pushing his mother down the stairs, arguing that he did not have the intent to cause her any injuries, but that rather it was due to him being in a state of anger and intoxication. The Committee notes the State party's assertion that the author's allegations of beatings by the police were reviewed by the Office of the General Prosecutor, Sosnovskiy District Court and Nizhegorodskiy Regional Court, and were found to be unsubstantiated. The Committee also notes the State party's argument that

[11] See *Kostenko v. Russian Federation* (CCPR/C/115/D/2141/2012), para. 6.3.

[12] See *K.E.R. v. Canada* (CCPR/C/120/D/2196/2012), para. 7.8.

the author's guilt has been established not just by his confession, but also by other evidence, including witness testimonies of his father and neighbour, and the results of the autopsy. Therefore, and in the absence of other evidence in support of his allegations, the Committee concludes that the author has failed to sufficiently substantiate his claim of ill-treatment and forced confession, for the purposes of admissibility, and therefore declares these claims inadmissible under article 2 of the Optional Protocol.

12. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and to the author.

International Covenant on Civil and Political Rights

Distr.: General
31 August 2018

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2250/2013*, **

Communication submitted by:	Oleksii Katashynskyi (represented by counsel, Sergiy Zayets)
Alleged victim:	Oleksii Katashynskyi
State party:	Ukraine
Date of communication:	19 March 2013 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 10 June 2013 (not issued in document form)
Date of adoption of Views:	25 July 2018
Subject matter:	Violation of the right and opportunity to take part in the conduct of public affairs and to be elected at genuine periodic elections
Procedural issues:	Exhaustion of domestic remedies; substantiation
Substantive issues:	Political activities; taking part in conduct of public affairs; voting and election; fair trial
Articles of the Covenant:	2, 14 and 25
Article of the Optional Protocol:	2

1. The author of the communication is Oleksii Katashynskyi, a Ukrainian national born in 1967. He claims to be a victim of a violation by Ukraine of his rights under articles 2, 14 and 25 of the Covenant. The Optional Protocol entered into force for the State party on 25 October 1991. The author is represented by counsel.

The facts as presented by the author

2.1 In October 2010, the author stood as a candidate for deputy of the Sevastopol City Council in the single-seat electoral constituency No. 17 in the election of People's Deputies to the Verkhovna Rada of the Autonomous Republic of Crimea (local elections). The

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

procedure for the conduct of the elections in Ukraine is subject to the Law on Elections of People's Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils, and Village, Township and City Mayors (the Law on Elections).[1] Constituency No. 17 consisted of five polling stations in the Gagarinsky district of Sevastopol. The author claims that he was denied his right to be elected as a result of the lost ballots in one of the polling stations, in which he had won the majority of votes.

2.2 The author states that, according to the results of the voting, which was held on 31 October 2010, his main opponent was Mr. G., given that the other candidates received an insignificant number of votes. According to the records of the polling station electoral commissions, the votes of the electorate were cast as set out below. The author received the most votes at polling station No. 02076.

Polling station No.	*Katashynskyi O.O. (number of votes)*	*G. S.A. (number of votes)*	*Preponderance in favour of Katashynskyi O.O., votes (+/-)*
02074	142	175	-33
02075	131	108	+23
02076	209	150	+59
02077	99	131	-32
02183	0	2	-2
Total	**581**	**566**	**+15**

2.3 On 1 and 2 November 2010, after the polling station electoral commissions had counted the votes and drawn up their reports, they transmitted them, together with other election-related documentation, to the Gagarinsky district electoral commission. On 3 November, after the Gagarinsky district electoral commission had accepted the documentation, it decided to conduct a recount of the votes deposited at polling stations Nos. 02075, 02076 and 02077. On the same day, during the vote recount, it was established that election-related documentation from the polling station No. 02076 was missing. The information concerning the missing documentation from polling station No. 02076 was submitted by the Gagarinsky district electoral commission to the Prosecutor's office. The author submits that no effective investigation was conducted.

2.4 The results reported by the polling station electoral commissions for polling stations Nos. 02075 and 02077 were confirmed during the vote recount.

2.5 On 4 November 2010, the Gagarinsky district electoral commission declared the vote at polling station No. 02076 invalid (without ordering a new election) owing to the inability to recount the votes and to verify the report on the voting results (the voting records) of the relevant polling station electoral commission. On the same day, the report

[1] Although pursuant to the provisions of the Law on Elections there is usually a three-level system of electoral commissions, for Sevastopol and several other regions of Ukraine this system had four levels, owing to the administrative arrangement and status of Sevastopol. The fourth level of the electoral commissions was created as a result of the splitting of the responsibilities of the territorial election commission between the Sevastopol district electoral commissions and the Sevastopol city electoral commission, both of which, according to the Law on Elections, had the status of territorial ones. Elections were therefore conducted by electoral commissions with four levels of hierarchy: (1) polling station electoral commissions, which directly organized the voting process and conducted the calculation of votes at the polling station; (2) district electoral commissions in Sevastopol, which determined the election results in each of the constituencies in the district on the basis of the data received from the polling station electoral commissions; they were also endowed with certain supervisory functions with regard to the polling station commissions (the district electoral commission of relevance in the context of the present communication is the Gagarinsky district electoral commission of Sevastopol); (3) the Sevastopol city electoral commission, which determined the results of the elections on the basis of the data received from the district commissions, and published the names of candidates deemed elected; and (4) the Central Electoral Commission of Ukraine, which had overall responsibility for the elections.

on the election results was drawn up; according to the report, Mr. G. had obtained 416 votes, while the author had obtained 372. The fact that the election results at polling station No. 02076 were deducted from the count of votes by the Gagarinsky district electoral commission led to a situation when the author received 44 fewer votes than his opponent, Mr. G. The said report was transmitted to the Sevastopol city electoral commission to establish the final election results.

2.6 On 5 November 2010, the Sevastopol city electoral commission drew up a report on the election results in constituency No. 17, and declared Mr. G. elected as deputy of the Sevastopol City Council.

2.7 On an unspecified date, the author appealed to the Circuit Administrative Court of Sevastopol against the decisions of the Gagarinsky district electoral commission of 3 November 2010 (on the vote recount) and 4 November 2010 (on the annulment of the results at polling station No. 02076). On 6 November 2010, the Circuit Administrative Court of Sevastopol quashed the two impugned decisions, concluding that the Gagarinsky district electoral commission had failed to ensure the integrity of the election with regard to the documentation of polling station No. 02076. The decision of the first instance court was upheld by the Sevastopol Administrative Court of Appeal on 8 November 2010.

2.8 On 6 November 2010, the author appealed to the Circuit Administrative Court of Sevastopol against the decision of the Gagarinsky district electoral commission of 4 November 2010 (on the election results). He requested the annulment of the report on the election results and referred to the decision of the Circuit Administrative Court of Sevastopol of 6 November 2010 in support of that request. On 8 November 2010, the Circuit Administrative Court of Sevastopol annulled the results of the election.

2.9 On 7 November 2010, the author appealed to the Circuit Administrative Court of Sevastopol against the decision of the Sevastopol city electoral commission of 5 November 2010 (on the election results in constituency No. 17). On 10 November 2010, the Circuit Administrative Court of Sevastopol quashed the decision of the Sevastopol city electoral commission, recognizing Mr. G. as the elected deputy of the Sevastopol City Council in constituency No. 17.

2.10 On 10 November 2010, the Gagarinsky district electoral commission drew up a new report on the vote count on the basis of the decisions of the Circuit Administrative Court of Sevastopol of 6 and 8 November 2010, which effectively confirmed that the author had won a majority of the vote in constituency No. 17. On the same day, the Gagarinsky district electoral commission also annulled its decisions of 3 November (on the vote recount) and 4 November 2010 (on the election results).

2.11 On 12 November 2010, the Sevastopol Administrative Court of Appeal quashed the decision of the Circuit Administrative Court of Sevastopol of 8 November 2010 (see para. 2.9 above) on the basis of an appeal submitted by the Gagarinsky district electoral commission.[2] On the same day, the Sevastopol Administrative Court of Appeal also quashed the decision of the Circuit Administrative Court of Sevastopol of 10 November 2010 (see para. 2.10 above).

2.12 On 15 November 2010, the Gagarinsky district electoral commission attempted to transmit to the Sevastopol city electoral commission the new report on the vote count of 10 November 2010, but the latter refused to accept it. On the same day, the author complained about the actions (omission to act) of the Sevastopol city electoral commission to the Circuit Administrative Court of Sevastopol. On 20 November 2010, the Circuit Administrative Court of Sevastopol rejected the author's complaint, holding that the election results had been published on 9 November 2010 and that, since the election had already been finalized, the Sevastopol city electoral commission had no grounds to accept the new report on the vote count. The decision of the Circuit Administrative Court of Sevastopol was upheld by the Sevastopol Administrative Court of Appeal on 24 November 2010.

[2] The grounds on which the Gagarinsky district electoral commission appealed the decision of the Circuit Administrative Court of Sevastopol of 8 November 2010 are unclear.

2.13 The author submits that the State party law does not allow for an appeal in the court of cassation on election-related matters, and that he has therefore exhausted all available domestic remedies.

The complaint

3.1 The author claims that the unreasonable restrictions violated his right and opportunity to take part in the conduct of public affairs and to be elected at genuine periodic elections by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, guaranteed by article 25 of the Covenant.[3] He adds that the key issue in the present communication is not how arbitrary the vote recount was, but rather the lawfulness of the authorities' refusal to effectively remedy the violation even after the fact of the violation had been established at the domestic level.[4]

3.2 The author also claims a violation of article 2 of the Covenant, and argues that he was deprived of effective means of legal defence at the domestic level, since the State party's courts refused to examine his complaint against the Sevastopol city electoral commission on its merits, referring to the fact that the election had already been finalized. Furthermore, although the author was contesting the election-related decisions made at the time when the election results were still being established, he was unable to keep up with the process; while he was lodging a complaint against one decision, another one of direct relevance to the impugned decision would be taken. Moreover, the decision recognizing Mr. G. as the elected deputy of the Sevastopol City Council effectively put an end to the election and made it impossible for the author to contest that decision.

3.3 The author also claims a violation of his rights guaranteed under article 14 of the Covenant. He refers to the decision of the Sevastopol Administrative Court of Appeal of 24 November 2010 (the final decision in the present communication), according to which, except for the decisions relating to the vote recount and the invalidation of the election at polling station No. 02076, the State party's courts have found themselves to be not competent to examine the author's complaints about the decisions taken by the electoral commissions, pointing to the fact that the resolution of all election-related disputes is solely within the competence of the electoral commissions and that the courts have no right to interfere into how that competence is implemented. The author adds that the electoral commissions have no features of a judicial body and that the State party law establishes that election-related disputes should be examined judicially.

State party's observations on admissibility and merits

4.1 The State party submitted observations on the admissibility and merits on 26 December 2013. With regard to the jurisprudence of the European Court of Human Rights, the State party does not consider it necessary to analyse *Kerimova v. Azerbaijan*, as the case involved another State party with different legislation. Concerning *Kovach v. Ukraine*, the European Court of Human Rights found a violation of article 3 of the Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the conflict between articles 70 and 72 of the 2001 Law on Parliamentary Elections, which resulted in a lack of legitimate aim for the interference by the authorities in the author's rights. In the present case, the Law on Elections of People's Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils, and Village, Township and City Mayors (the Law on Elections) has been applied. Therefore, *Kovach v. Ukraine* is not relevant.

4.2 The State party agrees with the facts presented in the author's communication, notably that, on 6 November 2010, the Circuit Administrative Court of Sevastopol (the first instance court) quashed the Gagarinsky district electoral commission decisions of 3

[3] The author refers to European Court of Human Rights judgment of 7 February 2008, *Kovach v. Ukraine* (application No. 39424/02). Although in that case the provisions of another election law were applied (parliamentary elections), the author points out that mutatis mutandis provisions of that law repeated the provisions of the Law on Elections (local elections).

[4] The author refers to European Court of Human Rights judgment of 30 September 2010, *Kerimova v. Azerbaijan* (application No. 20799/06).

November 2010, on the vote recount in polling station No. 02076, and 4 November 2010, on the invalidation of the election results at polling station No. 02076. The Court also recognized the failure of the district electoral commission to ensure the integrity of election-related documentation.

4.3 Furthermore, on 12 November 2010, the Sevastopol Administrative Court of Appeal rejected the author's complaints concerning the actions of the Gagarinsky district electoral commission and the Sevastopol city electoral commission with regard to their decisions (on the voting results, on drawing up a protocol on the election results, on the adoption of a decision on the election results and on the approval of those results) on the grounds that, firstly, at the moment both commissions took the decisions subsequently impugned, they were not aware and could not be aware of the first instance court ruling of 6 November 2010; and secondly, the protocol/report on the election results contains exclusively arithmetic data and cannot be the subject of a claim. The electoral commissions took the decisions on the basis of the documents and facts that they had available at the time. At the moment the decisions were taken, no violations were detected.

4.4 Ukrainian law provides for two ways to appeal the actions of an electoral commission: through the judicial system; and through the higher electoral commission. According to article 85 of the Law on Elections, appeals against actions of or inaction by electoral commissions may be appealed before the higher level electoral commission or in court. Complaints against the failure of the electoral commission to act may be lodged also with the Central Electoral Commission. According to national law, it is not necessary for both ways to be exhausted simultaneously. In the present case, however, the author should have complained to the Central Electoral Commission, because the judges indicated directly in their decisions that the issue of the correct drawing up of the protocol (report) on the election results was outside the scope of their competence and fell fully within that of the electoral commission.

4.5 On the basis of the above, the author has not exhausted all available domestic remedies provided by the State party, in accordance with article 2 of the Covenant. It further maintains that the national judges acted within national legislation and not in violation of article 14 of the Covenant. Lastly, article 25 of the Covenant was not violated by the national authorities.

Author's comments on the State party's observations

5.1 In his comments of 28 May 2014, the author submits that, as the State party rightly explains, the electoral commissions' actions, failure to act and decisions may be challenged in two parallel ways: in court, or before the higher commission. He underlines that the domestic legislation does not limit in any way the competence of the courts in favour of the electoral commissions, as the two avenues are of equal value. Despite the State party's assertion that the national court lacked competence to review an election-related dispute, the court did not refuse to review the complaint, nor did it find it inadmissible; it also issued a decision on its merits. If the court had not been competent, it should have left the claim without consideration or discontinued the case. Moreover, paragraph 11 of article 85 of the Law on Elections of People's Deputies of the Verhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Township and City Mayors requires the court where the complaint is filed to inform the relevant electoral commission and the higher-level electoral commission immediately about the legal challenge and the decision taken by the court. As some of the author's complaints concerned the actions of the Sevastopol city electoral commission, the court notified the Central Electoral Commission. Moreover, according to paragraph 12 of article 85 of the said law, if the electoral commission receives a notification from the court about the initiation of similar proceedings, the electoral commission must return the complaint without consideration no later than one day after receiving the notification from the court, stating the reasons for its return. In this way, parallel appeals are avoided, and the law requires the complainant to choose one remedy. The judicial remedy to election-related disputes therefore appears to be a priority, rather than the submission of the complaint to the electoral commission.

5.2 It was therefore enough for the author to exhaust at least one of the remedies available, which he did by appealing to the court. He consequently submits that he has exhausted the domestic remedies available and his communication is admissible.

5.3 With regard to the merits of the communication, the European Court of Human Rights cases of *Kovach v. Ukraine* and *Kerimova v. Azerbaijan* concern situations similar to that of the author. The domestic electoral laws applied in *Kovach v. Ukraine* and in the present case are similar. Even though *Kovach v. Ukraine* concerns parliamentary elections while the current communication concerns local government elections, and these two categories of elections are regulated by two different laws, the provisions of the laws relating to the nature of complaints are analogous. In this regard, the State party did not explain the difference in the content of the laws (in particular between articles 70 and 72 of the Law on Parliamentary Elections and articles 73 and 75 of the Law on Elections), which could justify different applications and why such a difference would be material in the present communication. The author maintains that the present communication concerns not the candidate selection criteria but rather the way in which the voting results were reviewed. Unlike in the case of *Kovach v. Ukraine*, he was able to prove at the national level that the review was wrong. The main question in the present communication is whether the behaviour of the authorities and the normative regulation comply with the requirements of article 25 of the Covenant with regard to the obligation to consider the factual results of the vote, the authenticity of which was proven.

5.4 The author also challenges the State party's argument that the commissions were not aware of the violations at the time they were taking the decisions subsequently impugned. The author affirms that States parties must respect the standards established by the Covenant, irrespective of whether there is intent on the part of the authorities to violate such standards. States parties must eliminate the violations from the time they know about them. In that sense, the electoral commissions' members' lack of information about the court decisions may exempt them from personal responsibility for the violations, but not from the responsibility to remedy the violations once they are known.

5.5 The author notes that the court decisions were issued with the participation of the electoral commission, and included the mandatory requirement to inform a higher-level electoral commission; the commissions were therefore aware of the mistakes. Moreover, the court decision establishing the fact of violations of the election law was issued during the period when the electoral process had not yet been finalized; the violations could therefore have been effectively remedied. The author submits that the violation of the Covenant in the present communication consists in the fact that, even though he won the majority of votes, he was not recognized as the elected deputy of the Sevastopol City Council and was therefore not allowed to take part in the conduct of public affairs. The State party has not presented any arguments justifying this situation in the context of article 25 of the Covenant. The author reiterates that his rights have been violated under articles 2, 14 and 25 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's claim that the author has not exhausted all effective domestic remedies available to him, given that he has not appealed to the Central Electoral Commission with regard to the violations under article 25 of the Covenant. The Committee observes, however, that it is undisputed that the author did indeed lodge a complaint with the Circuit Administrative Court of Sevastopol and subsequently appealed to the Administrative Court of Appeal of Sevastopol. The State party has not identified any

other reasonably available remedies that the author could have been expected to exhaust. The Committee therefore considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes the author's submission that the State party violated its obligations under article 2 of the Covenant because, even though the violation of electoral law had been determined at the national level, the author was deprived of the effective means to address the consequences of the violation. The Committee recalls its jurisprudence, according to which the provisions of article 2 of the Covenant lay down a general obligation for States parties, and do not give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[5] The Committee considers that the author's claims under article 2 (3) should, however, be examined in conjunction with article 25 of the Covenant. It therefore considers the claims admissible.

6.5 The Committee notes the author's claim that his right under article 14 of the Covenant to be entitled in determination of his rights and obligations in a suit of law to a fair and public hearing by tribunal established by law was violated because, except for the decisions made in relation to the vote recount and the annulment of the election results from polling station No. 02076, the State party's courts declared themselves not competent to examine the author's complaints about the decisions taken by the electoral commissions and that the resolution of all election-related disputes was within the competence of the electoral commissions. The Committee also notes the State party's argument that the author should have lodged a complaint with the Central Electoral Commission, because the courts held that the correct resolution of the election results was beyond their competence and fell fully within that of the electoral commission. The Committee notes however the author's claim, which is not refuted by the State party, that State party law provides for two ways for appealing the actions of electoral commissions (with a higher-level electoral commission or through judicial review) and does not require that both ways be pursued simultaneously. The Committee therefore declares the author's claims under article 14 of the Covenant sufficiently substantiated for the purposes of admissibility.

6.6 The Committee notes the author's claims that he suffered a violation of his right to take part in the conduct of public affairs and to be elected at genuine periodic elections under article 25 of the Covenant. The Committee considers that the author has sufficiently substantiated, for the purposes of admissibility, his claims under articles 14 and 25, in conjunction with article 2 (3) of the Covenant, and therefore proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that the circumstances of the election, where the electoral commission decided not to take the voting results of one polling station into account since the records had been lost, and the failure of the State party to remedy the ensuing violation of his rights, constituted a violation of article 25 of the Covenant. The Committee recalls that an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws that are compatible with the Covenant. The security of ballot boxes must be guaranteed. There should be independent scrutiny of the voting and counting processes and access provided to judicial review or another equivalent process so that electors have confidence in the security of the ballot and the counting of votes.[6] The Committee observes that the annulment of the voting results at polling station No. 02076, without ordering a new election or taking other action to remedy the fact that the election-related documentation had been lost, led directly to the declaration of Mr. G., and not the author, as the successful candidate. The Committee notes that the first instance court

[5] See *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5 and *Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4.

[6] See Human Rights Committee, general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 20.

overturned the decisions of the electoral commission, a decision that a higher court subsequently quashed. The Committee also notes that, although the author was contesting the election-related decisions at the time when the election results were still being established, several related decisions were taken almost contemporaneously. While acknowledging the legitimacy of speedy procedures when election-related decisions are contested, the Committee notes the author's explanation that he was unable to effectively file updated complaints, given that while he was lodging a complaint against one decision, other decisions of direct relevance to the impugned election were taken. Moreover, the decision recognizing Mr. G. as the elected deputy effectively brought an end to the election and made it impossible for the author to contest the outcome. The Committee also notes that the State party does not contest the facts concerning the court decisions as reported by the author, including the recognition of the failure to ensure the integrity of election-documentation. Therefore, in the circumstances of the author's case, the Committee concludes that the decision to annul entirely the voting results from polling station No. 02076 without ordering a recount was arbitrary. Coupled with the subsequent lack of access to an effective judicial review, this decision led to a disproportionate and unreasonable restriction of the author's rights under article 25, read alone and in conjunction with article 2 (3). In the light of the foregoing and in view of the material brought before it, the Committee concludes that the State party is responsible for breaching the author's rights under article 25, read alone and in conjunction with article 2 (3) of the Covenant.

7.3 Having found a violation of article 25, read alone and in conjunction with article 2 (3) of the Covenant, the Committee will not examine separately the author's claims under article 14 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the author's rights under article 25, read alone and in conjunction with article 2 (3) of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation to, inter alia, provide adequate compensation and appropriate measures of satisfaction, including reimbursement of any legal costs, also with regard to non-pecuniary losses incurred by the author. The State party is also under an obligation to take all steps necessary to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them translated in the official languages of the State party and widely disseminated.